

MR 28 2003

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

GENERAL ELECTRIC CAPITAL CORPORATION, a Delaware corporation,
44 Old Ridgebury Road
Danbury, Connecticut 06810,
Plaintiff,
v.
AVBASE AVIATION, LLC,
an Ohio limited liability company,
6200 Riverside Drive
Cleveland, Ohio 44135,
Defendant.

) CASE NO.
JUDGE

1:03CV1027

JUDGE ALDRICH

MAG. JUDGE HEMANN

**COMPLAINT OF PLAINTIFF GENERAL ELECTRIC CAPITAL CORPORATION
AGAINST DEFENDANT AVBASE AVIATION, LLC**

NOW COMES Plaintiff, GENERAL ELECTRIC CAPITAL CORPORATION, a Delaware corporation, through its attorneys, and, as its complaint against Defendant, AVBASE AVIATION, LLC, an Ohio limited liability company, states as follows:

Parties and Jurisdiction

1. Plaintiff General Electric Capital Corporation (“GE Capital”), is a corporation organized under the laws of Delaware with its principal place of business located in Stamford, Connecticut.
2. Defendant AvBase Aviation, LLC (“AvBase”) is a limited liability company organized under the laws of Ohio with its principal place of business located at 6200 Riverside Drive, Cleveland, Ohio 44135.

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332, in that it is of a civil nature involving, exclusive of interest and costs, a sum in excess of \$75,000.00 and every issue of law and fact herein is wholly between citizens of different states. The claims forming the basis of this Complaint, or a significant portion thereof, arose in that geographical area which is contained within the venue in which this matter is filed.

4. At all times relevant to this matter, GE Capital was in the business of, *inter alia*, leasing aircraft to lessees.

5. At all times relevant to this matter, AvBase was and is in the aircraft chartering business.

The Aircraft Lease

6. On or about December 20, 1999, GE Capital, as lessor, and American Buildings Company, a corporation organized under the laws of Delaware with its principal place of business located at 1150 State Docks Road, Eufaula, Alabama ("American"), as lessee, entered into an Aircraft Lease Agreement (the "Aircraft Lease"). Pursuant to the Aircraft Lease, GE Capital leased to American, for use in American's business operations, one (1) aircraft identified as a Cessna 650, Serial No. 650-7068, FAA Registration No. N111BZ, with two (2) Garrett Model TFE 731-4R-2S Engines, Serial Nos. P102235 and P102248, complete with logs, manuals, books, components, and all related equipment, including that listed on Annex A-1 to the Aircraft Lease (collectively, the "Aircraft"), pursuant to the terms stated therein. A true and correct copy of the Aircraft Lease, the terms of which are incorporated herein by reference, is attached hereto as Exhibit A.

7. The Aircraft Lease provides that American shall not, without the prior written consent of GE Capital, sublet, charter, or part with possession of the Aircraft or any engine or part thereof or enter into any interchange agreement. See Aircraft Lease, ¶ 8(a).

The Aircraft Charter Addendum

8. Subsequent to execution of the Aircraft Lease, GE Capital provided written consent to American to charter the Aircraft to AvBase pursuant to certain terms and conditions.

9. On April 1, 2002, GE Capital, as lessor, American, as lessee, and AvBase, as operator, entered into an Aircraft Charter Addendum (the "Charter Agreement"). Pursuant to the Charter Agreement, American was permitted to charter the Aircraft to AvBase from time to time and pursuant to the terms stated therein. A true and correct copy of the Charter Agreement, the terms of which are incorporated herein by reference, is attached hereto as Exhibit B.

10. Also on April 1, 2002, American and AvBase entered into an Aircraft Charter Certificate Management Agreement (the "Operating Agreement"). The Operating Agreement is expressly referenced in and incorporated into the Charter Agreement. A true and correct copy of the Operating Agreement, the terms of which are incorporated herein by reference, is attached hereto as Exhibit C.

11. Pursuant to the terms of the Charter Agreement, upon default by American under the Aircraft Lease and notification of AvBase of such default, AvBase is required to pay to GE Capital instead of American any and all sums due and owing under the Charter Agreement. See Charter Agreement, ¶ 5.

Default by American Under the Aircraft Lease

12. American is in default under the Aircraft Lease for its failure to pay the amounts due thereunder.

13. More specifically, American has failed to make monthly lease payments due and owing to GE Capital under the Aircraft Lease beginning January 2003. The current aggregate

payment defaults, not including attorneys' fees and costs, totaled \$10,550,356.83 as of March 19, 2003.

14. On March 19, 2003, GE Capital, through its attorneys, notified American of this default and made demand upon American to immediately cure the payment default under the Aircraft Lease. Pursuant to this default notice, GE Capital has declared all amounts due under the Aircraft Lease immediately due and payable, as expressly provided for therein. A true and correct copy of GE Capital's default notice to American, the terms of which are incorporated herein by reference, is attached hereto and incorporated herein as Exhibit D.

15. Despite demand, American has failed and refused to pay the amount due and owing under the Aircraft Lease.

GE Capital's Notice to AvBase

16. On February 25, 2003, GE Capital, pursuant to Section D2.(c) of the Charter Agreement, gave formal notice (the "February 25, 2003 Notice") to AvBase of American's default under the Aircraft Lease, and further notified and directed AvBase to remit to GE Capital all payments due and owing and to come due and owing from AvBase under the Charter Agreement. A true and correct copy of the February 25, 2003 Notice, the terms of which are incorporated herein by reference, is attached hereto as Exhibit E.

17. Pursuant to the February 25, 2003 Notice, AvBase tendered to GE Capital payment due and owing under the Charter Agreement for January 2003 in the amount of approximately \$33,000.00.

AvBase's Failure to Pay Additional Amounts Due and Owing

18. AvBase has failed, however, to make to GE Capital any payments due for months after January 2003.

19. Specifically, AvBase has failed to pay to GE Capital any portion of the \$52,485.75 due and owing under the Charter Agreement for February 2003.

20. Moreover, AvBase has failed to pay to GE Capital any portion of the amount due and owing under the Charter Agreement for March 2003 or any month thereafter, the precise amount of which presently is unknown, but which amount, upon general information and belief is in excess of such figure as when combined with the amount due as averred in the preceding paragraph, is in excess of \$75,000.00.

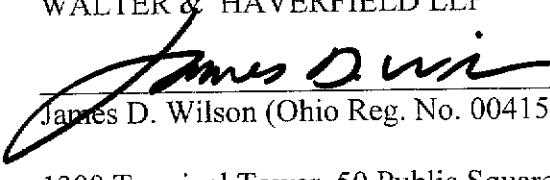
21. GE Capital has made demand upon AvBase for amounts due for February and March 2003. Specifically, GE Capital sent to AvBase on April 24, 2003, a letter (the "April 24, 2003 Letter") demanding immediate payment of these amounts due GE Capital under the terms of the Charter Agreement. A true and correct copy of the April 24, 2003 Letter, the terms of which are incorporated herein by reference, is attached hereto as Exhibit F.

22. Despite this demand for GE Capital, AvBase has failed and refused, and continues to fail and refuse, to pay GE Capital the sums due and owing to it under the Charter Agreement.

23. GE Capital has substantively performed and satisfied any and all conditions and obligations required of it under the terms of the Aircraft Lease, the Charter Agreement, and the Operating Agreement.

WHEREFORE, Plaintiff, GENERAL ELECTRIC CAPITAL CORPORATION, a Delaware corporation, prays the Court to enter a judgment in its favor and against Defendant, AVBASE AVIATION, LLC, an Ohio limited liability company, in the amount due and owing to it under the Charter Agreement, with prejudgment interest at the statutory rate on all outstanding sums, plus all reasonable attorneys' fees, costs, and expenses incurred in bringing this lawsuit, plus any and all additional relief demanded by justice and equity.

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